

**BEFORE THE APPEALS BOARD  
FOR THE  
KANSAS DIVISION OF WORKERS COMPENSATION**

**DEBORAH A. JEFFERSON**  
Claimant

VS.

**MEDICALODGES, INC.**  
Respondent

AND

**TRAVELERS PROPERTY CASUALTY  
OF AMERICA**  
Insurance Carrier

Docket No. 1,028,394

**ORDER**

Respondent and its insurance carrier request review of the March 2, 2007 preliminary hearing Order entered by Administrative Law Judge Robert H. Foerschler.

**ISSUES**

The Administrative Law Judge (ALJ) ordered the respondent to pay temporary total disability benefits (TTD) commencing December 12, 2006 and to arrange “for the provision of the diabetes medicine, recommended to control her condition, so as to permit surgery”.<sup>1</sup>

The respondent and its insurance carrier (respondent) requests review of the Order alleging the ALJ exceeded his jurisdiction in ordering respondent to provide the claimant with diabetes medication. Respondent maintains the only issue to be resolved at the parties’ preliminary hearing was claimant’s entitlement to TTD. Moreover, claimant’s diabetic condition is not work-related and therefore treatment for that condition is not proper.

Claimant argues that the ALJ’s Order is appropriate and as an Order directing respondent to provide medical treatment, the Board has no jurisdiction to hear this matter.

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<sup>1</sup> ALJ Order (Mar. 2, 2007).

**FINDINGS OF FACT AND CONCLUSIONS OF LAW**

Having reviewed the whole evidentiary record filed herein, this Board Member makes the following findings of fact and conclusions of law:

There is no question that the claimant sustained a compensable accident. And while there was an earlier dispute between the parties as to claimant's treatment, the parties entered into an agreement whereby several physicians would provide ongoing treatment including a comprehensive pain management program to address claimant's back complaints.

At the preliminary hearing which was held on March 1, 2007 the only issue that remained in dispute was claimant's entitlement to TTD.<sup>2</sup> This was noted by the ALJ and confirmed by claimant's counsel. At no time did claimant request respondent to provide medications to control her ongoing diabetic condition. Rather, claimant was seeking TTD benefits from December 12, 2006, the date Dr. Ciccorelli took her off work until such time as claimant could be accommodated or released at maximum medical improvement. Claimant testified that Dr. Ciccorelli mentioned the possibility of surgery, but she added that due to claimant's smoking and her uncontrolled diabetic condition, Dr. Ciccorelli was unwilling to perform surgery.<sup>3</sup>

While still on the record, the ALJ made the following comments:

The problem is that this lady has got to have some kind of -- before anybody can do anything for her, she's got to have some relief from her diabetes. I realize that that isn't the employer's problem, you know, and it wasn't caused by the employment or anything like that, but it's part of the treatment that she's going to have to have.<sup>4</sup>

The ALJ went on to award TTD benefits commencing December 12, 2006, recommended the respondent provide some accommodated employment for claimant and also directed respondent to provide diabetes medicine.

In order for a claimant to collect workers compensation benefits, including medical treatment, she must suffer an accidental injury that arose out of and in the course of his employment. The phrase "out of" employment points to the cause or origin of the accident and requires some causal connection between the accidental injury and the employment.

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<sup>2</sup> P.H. Trans. at 5.

<sup>3</sup> *Id.* at 20. The medical records confirm Dr. Ciccorelli's hesitancy to operate as long as claimant smokes 2 pack of cigarettes a day and her diabetes remains uncontrolled.

<sup>4</sup> *Id.* at 50-51.

An injury arises “out of” employment when it is apparent to the rational mind, upon consideration of all circumstances, that there is a causal connection between the conditions under which the work is required to be performed and the resulting injury. An injury arises “out of” employment if it arises out of the nature, conditions, obligations and incidents of the employment.<sup>5</sup>

Under these facts, claimant has admittedly suffered a compensable accident. However, there is absolutely no evidence that her diabetic condition was caused or aggravated by the compensable accident. All that is clear is that claimant’s diabetes is presently out of control. In fact, there is no suggestion in this file that claimant was even seeking the payment for her diabetic medications. The *only* issue presented to the ALJ was claimant’s entitlement to TTD as a result of Dr. Ciccorelli’s decision to take her off work and a later release that imposed restrictions. Absent evidence as to the causal nature of claimant’s diabetic condition, this Board Member finds that claimant has failed to establish a requisite element of her claim, namely that her need for treatment of her diabetes arises out of and in the course of her employment with respondent. Accordingly, the ALJ’s Order is reversed.

By statute, the above preliminary hearing findings and conclusions are neither final, nor binding as they may be modified upon full hearing of the claim.<sup>6</sup> Moreover, this review on a preliminary hearing Order may be determined by only one Board Member, as permitted by K.S.A. 2006 Supp. 44-551(i)(2)(A), as opposed to the entire Board in appeals of final orders.

**WHEREFORE**, it is the finding, decision and order of the undersigned Board Member that the Order of Administrative Law Judge Robert H. Foerschler dated March 2, 2007, is reversed.

**IT IS SO ORDERED.**

Dated this \_\_\_\_\_ day of May 2007.

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BOARD MEMBER

c: Geoffrey L. Schmidt, Attorney for Claimant  
Ronald A. Prichard, Attorney for Respondent and its Insurance Carrier  
Robert H. Foerschler, Administrative Law Judge

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<sup>5</sup> *Newman v. Bennett*, 212 Kan. 562, 512 P.2d 497 (1973).

<sup>6</sup> K.S.A. 44-534a.